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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,945	01/22/2001	John A. MacDonald	12685-002001	3385
26161	7590	07/01/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			MOONEYHAM, JANICE A	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

09/766,945

## Applicant(s)

MACDONALD ET AL.

## Examiner

Jan Mooneyham

## Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This is in response to the communication filed on January 22, 2001. Claims 1-28 are currently pending in this application.

#### *Information Disclosure Statement*

2. The information disclosure statement filed June 6, 2003 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because:

37 CFR 1.98(a)(2) requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed.

37 CFR 1.98(a)(1) requires a list of all patents, publications, or other information submitted for consideration by the Office.

The applicant has failed to properly identify the item.

Thus, the applicant has failed to properly list the item, the applicant has failed to properly identify the item and the applicant has failed to provide an eligible copy. The IDS has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-2, 4-14, and 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-2, 4-14 and 26 only recite an abstract idea. The recited steps of merely displaying a plan of units, receiving from a user an interactive indication of a period of interest, receiving continually updated information about the availability for booking, using the updated information to display units do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and

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paper or manually. These steps only constitute an idea of how to display information about booking. There is no technology in the body of the claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 11-13, 15-16, 18, 20-23, and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al (US 2002/0082879) (hereinafter referred to as Miller).

**Referring to Claims 1-3, 11, 12, and 13-14:**

Miller discloses a method comprising:

displaying a plan of units located at a place of accommodation (Figs. 2-3, 22-23, a stadium can be broadly construed to be a place of accommodation);

receiving from a user an interactive indication of a calendar period of interest (Figs. 33-35) ;

receiving continually updated information about the availability for booking during specified calendar periods, of units displayed on the plan (Fig. 30 – 3014);

using the updated information to display in the vicinity of units on the plan an indicator of the availability state of units during the calendar period of interests (Figs. 29A-32A).

Miller further discloses a method comprising displaying one indicator per unit, the display is on a web browser (page 2 [0051]), displaying a graphic image when the user moves a

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pointer over the unit on the plan (page 2 [0052-0053]), displaying textual information relating to features of a unit when the user moves a pointer over the unit on the plan (page 2 {0052-0053}, page 9 [0237]) and wherein the plan comprises a seating arrangement and wherein the seating arrangement is a theatre, stadium or restaurant (Figs. 1-37).

**Referring to Claims 15, 16, 18, and 27:**

Miller discloses a method and system comprising:

obtaining at least one plan of units from each of multiple places of accommodation, the different places of accommodation having different configurations (Fig. 1 – venue databases (18), page 1 [0007], Fig. 28);

making the plans of units available through a publicly accessible electronic network (Fig. 1, page 2 [0051]);

receiving continually updated information concerning the availability state of the units displayed on a plan during specified time periods (Fig. 30-31, page 9 [0241]); and

making the updated information available through the network so that it can be accessed by a user while viewing the plans of the units (Fig. 30-31).

Miller further discloses a method further including using the updated information to display an indicator in the vicinity of units on the plan of the availability state of units during a calendar period of interest (page 9 [0241]).

**Referring to Claims 20-23:**

Miller discloses a method comprising:

obtaining an electronically represented plan of units for a place of accommodation (Figs. 2-3, 22-23 and 28);

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displaying the plan (Figs. 2-3)

enabling a developer to interactively associated coordinates with each unit of the plan, to identify hotspots on which a user can position a pointer to obtain information associated with each unit.( page 2 [0052]).

Miller further discloses a method wherein the information includes a graphic image (page 3 [0069], page 1, [0005]), textual information relating to features of a unit (page 9 [0237], page 1 [0005]), and a pop-up window (page 2 [0053]).

**Referring to Claim 26:**

Miller discloses a method comprising:

displaying a plan of units located at a place of accommodation (Figs. 1-37).

displaying a graphic image of the interior of a unit (Figs. 1-37, page 2 [0005], page 3 [0069]).

**Referring to Claim 28:**

Miller discloses a web page comprising:

a plan of units of accommodation at a location (Figs. 2-3) and

indicators on the plan in the vicinity of units of the accommodation, the indicators indicating the availability of the units (page 9 [0241])

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 4-10, 17, 19, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller.

**Referring to Claim 24:**

Miller discloses a method comprising:

displaying, on a web browser, a plan of units located at a facility (Figs. 1-37),  
receiving an interactive indication from a user of a calendar period of interest (Figs. 32B-35);

receiving continually updated information about the availability for booking of units displayed on the plan during specified calendar periods (Figs. 1-37), and

using the updated information to display (Figs. 1-37, page 9 [0241]).

Miller does not disclose a method wherein the plan is of units located at a lodging facility. However, Miller discloses a method wherein the plan includes stadiums, theaters, and restaurants. The fact that the facility is for lodging is nonfunctional descriptive material and carries little patentable weight since the method steps are the same no matter what type facility. However, Miller does disclose displaying a view from the seat (page 2 [0053]). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate into the teachings of Miller a graphic image of the interior of a unit because the nature of the image does not functionally relate to the steps in the method claimed and thus does not patentably distinguish the claimed invention.

**Referring to Claims 4-10, 17, 19, and 25:**

Miller does not disclose that the place of accommodation comprises a lodging facility, a cruise ship, cabins on a cruise ship, an image of a deck, or rooms or suites in a hotel.



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However, these differences are found in nonfunctional descriptive material and are not functionally involved in the steps recited. The steps would be performed the same regardless of the type accommodation. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have this type of content because such content does not functionally relate to the steps in the method claimed and thus does not patentably distinguish the claimed invention.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JP 2002032511 discloses a hotel room system which shows room availability and photographed images of the hotel room.

Expedia discloses a travel website which allows for one to book a flight, reserve a room, book a cruise and many other travel related items.

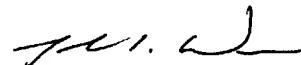
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan Mooneyham whose telephone number is (703) 305-8554. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JM



**JOHN G. WEISS**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**